



James, M and Osborn, G (2012) The Sources and Interpretation of Olympic Law. Legal Information Management, 12 (2). pp. 80-86. ISSN 1472-6696

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Version: Accepted Version

Publisher: Cambridge University Press/British and Irish Association of Law Librarians

DOI: <https://doi.org/10.1017/S1472669612000278>

Please cite the published version

<https://e-space.mmu.ac.uk>

The Sources and Interpretation of Olympic Law

Prof Mark James and Prof Guy Osborn

Abstract: In this article, Mark James and Guy Osborn discuss how the relationships between the various members of the Olympic Movement are governed by the Olympic Charter and the legal framework within which an edition of the Olympic Games is organised. The legal status of the Charter and its interpretation by the Court of Arbitration for Sport are examined to identify who is subject to its terms and how challenges to its requirements can be made. Finally, by using the UK legislation that has been enacted to regulate advertising and trading at London 2012, the far-reaching and sometimes unexpected reach of Olympic Law is explored.

Keywords: sports law; Olympic Charter; Olympic Games; Court of Arbitration for Sport

INTRODUCTION

The Olympic and Paralympic Games of the 30th Olympiad, held in London between July and September 2012, will be the largest sporting and cultural event in the world with a global audience reaching into the billions.¹ This festival of athletic endeavour and celebration of sporting achievement has grown into a massive commercial enterprise, with the latest estimates of the London 2012 budget reaching almost £11 billion.² What is less well known is that there is a complex legal framework in place to govern the relationships between the International Olympic Committee (IOC) and any international sports federation, athlete, commercial undertaking, individual person and municipal, local, regional and national government that has anything to do with the organisation of each edition of the Olympics.

At the supra-national level, the Olympic Charter defines the key roles and responsibilities of each of the bodies involved with the organisation of the Games and regulates the relationships between them. Below this sits the domestic law that enables the host city to organise, and to raise the funding necessary, to host such a mega-event. The IOC maintains strict control over the commercial and intellectual property rights associated with the Olympic Movement in general, and the Olympic Games in particular, so that it can maximise its revenue generation through exclusive arrangements with official sponsors. These generic rights are supplemented further by the country-specific legislation, required by the IOC of each host nation of the Olympic Games under the Host City Contract, to ensure that the Olympic brand is protected from unauthorised use and the consequential dilution of its value. This legal framework is extremely far-reaching and is capable of having an impact far beyond those who are officially involved with the organisation of the Olympic Games.

THE STRUCTURE OF THE OLYMPIC MOVEMENT

The Olympic Movement has three main constituent bodies: the IOC; the international sports federations and the 204 National Olympic Committees (NOC).³ The IOC sits at the head of the Olympic Movement and is charged with its day-to-day running. In Rule 15 of the Olympic Charter, it is described as being an international, non-governmental, not-for-profit association, recognised by Swiss law. The IOC is comprised of a maximum of 115 members, of whom a majority but not more than 70, must hold office wholly independently of any other function that they carry out. The remaining members are divided equally between athletes,

senior office holders in international sports federations and senior office holders in NOCs. The aims of the IOC are to uphold the Olympic Charter and to promote the Fundamental Principles of Olympism. However, in terms of profile, its most important job is to assess the applications of candidate cities and to choose which one will act as host city for each edition of the Games.

The international sports federations are the bodies that represent a sport at a global level (such as FIFA for football), or a series of related sports (such as the International Skiing Federation for skiing and related snow sports). All sports seeking to be considered for inclusion on either the summer or winter Olympic programme must be recognised by the IOC as a member of the Olympic Movement, though in reality many others also seek such recognition as a benchmark of the quality of their governance procedures.⁴ National members of international sports federations, their constituent clubs and athletes are all included as members of the Olympic Movement.

The mission of the NOCs is to develop, promote and protect the Olympic Movement in their respective countries in accordance with the Olympic Charter.⁵ They are the IOC's representatives in a country rather than being a country's representative to the IOC; in the UK, the British Olympic Association (BOA) is the sole body recognised as having NOC status.⁶ NOCs fulfil two key functions that bring them into the public consciousness: they choose which cities from within their jurisdiction can go forward to be considered by the IOC for host city status and are the bodies responsible for inviting athletes to compete on their behalf at each Olympic Games. These two key groups, the international sports federations and NOCs, must adhere to the Olympic Charter⁷ and incorporate the World Anti-Doping Code into their constitutions.⁸

One final group of, constantly changing, key members of the Olympic Movement are the local organising committees of each edition of the Olympic Games.⁹ Each Games are awarded to their host city around seven years prior to their taking place, meaning that there are usually three organising committees in existence at any one time. At present these are the London Organising Committee of the Olympic Games (LOCOG) and its equivalents for the Sochi Winter Games in 2014 and the next summer Games in Rio in 2016.¹⁰

THE ROLE AND PURPOSE OF THE OLYMPIC CHARTER

The Olympic Charter has six chapters and acts as the constitutional instrument for the whole Olympic Movement, governing the relationships between its various members.¹¹ Chapter 1 defines the composition of the Olympic Movement and the commercial rights vested in it, including the five ringed Olympic symbol and flag, the motto *citius, altius, fortius* and the Olympic Torch and anthem. As the Charter also stands as the governing statutes of the IOC, Chapter 2 defines its role and powers and those of its various sub-committees. As the IOC is by law a private association, the Charter operates on a quasi-contractual basis and establishes the main reciprocal rights and obligations of the Olympic Movement's key members as defined in Chapters 3 and 4, covering the international sports federations and the NOCs respectively. Chapter 5 is by far the largest section of the Charter and provides a detailed explanation of how an edition of the Olympic Games must be organised and the procedure for choosing a host city. Finally, Chapter 6 provides that any disputes arising out of the interpretation or application of the Charter or in connection with the Olympic Games can be submitted exclusively to the Court of Arbitration for Sport. In this way, the IOC seeks to avoid

the long and costly process of litigation before national and supra-national courts wherever possible.

The final point of interest when reading the Olympic Charter is what might be referred to as its extended preamble. This includes the Fundamental Principles of Olympism and sets out in seven paragraphs at the start of the Charter what can be described as the ethos, or in modern business terms, the mission statement, of the Olympic Movement. In essence, Olympism denotes the use of sport to promote social responsibility, respect for universal fundamental ethical principles, a peaceful society, the preservation of human dignity and the spirit of friendship and fair play. From a structural perspective, it seeks to ensure compliance by members of the Olympic Movement with principles of good governance and that discrimination in sport on any grounds is eliminated. This ideological declaration, or teleological interpretation of the Olympic Charter,¹² provides additional guidelines to members by adding a gloss on the Rules that follow. These are not just hollow claims being made here; it is from the Fundamental Principles of Olympism that the IOC's commitment to the Court of Arbitration for Sport (CAS) as a world court for sport, and the World Anti-Doping Agency (WADA) in its fight against the use of performance-enhancing drugs, can be traced.

INTERPRETATION OF THE OLYMPIC CHARTER

Disputes arising out of the application, or interpretation, of the Olympic Charter are dealt with by two separate approaches, each of which is outlined in Rule 61. Where a dispute arises from a decision of the IOC, the IOC Executive Board has sole power to determine the outcome. Where there is a genuine dispute over the decision, however, from a practical perspective it will be submitted to CAS for arbitration, as permitted by Rule 61(1) of the Charter. In all cases where a dispute arises at, or in connection with the Olympic Games, Rule 61(2) requires all hearings to be submitted to the exclusive jurisdiction of CAS. Depending on the complexity of the case, and/or the need for a speedy resolution of the dispute, the hearing may be before the permanent panel based in Lausanne, or one of its regional offices in New York, USA or Sydney, Australia. In addition there is an Ad Hoc Division; this panel has sat at all Olympic Games since Atlanta 1996 and provides an expedited procedure that allows for a rapid response to issues that have an immediate impact on participation in the competition.¹³ Therefore, the reality is that CAS is the final arbiter on the interpretation of the Olympic Charter.

The standing of CAS in world sport, and its role as the tribunal of last instance on Olympic matters, was reinforced by a challenge to its independence brought before the Swiss courts in 1993. The German rider, Elmar Gundel, was banned from competition by the International Equestrian Federation (FEI) for doping his horse. He initially appealed to CAS, which upheld the FEI's decision,¹⁴ before challenging the jurisdiction of CAS before the Swiss courts by claiming it was not sufficiently independent from the IOC to hear his case. The Swiss Federal Court, the final court of appeal in Switzerland, held that CAS was a genuine arbitral body capable of hearing disputes of this nature and that as it was not an organ of any international sports federation and did not receive instructions or funding from them, it had sufficient autonomy to be considered to be a truly independent panel. However, it also stated that if the defendant body had been the IOC, a different outcome was likely because the IOC provided the vast majority of the funding necessary for CAS to operate, had the power to change CAS's statutes and played a significant role in the appointment of CAS panel

members.¹⁵ The closeness of these links suggested that there was insufficient separation of powers between the IOC as 'law maker' and CAS as the Olympic Movement's judicial authority. As a result, the statutes of CAS were completely rewritten in 1994 and the tribunal was re-launched as a completely independent self-funding body, free from any interference from any member of the Olympic Movement and especially the IOC.

The authority of CAS in its role as interpreter of the Olympic Charter was seen most overtly in the recent high profile case brought by the United States Olympic Committee (USOC) on behalf of one of its prospective athletes and reigning Olympic 400m champion, LaShawn Merritt.¹⁶ Following the IOC Executive Board meeting in Osaka in 2008, Rule 45 of the Olympic Charter was amended so that any athlete who had been suspended for a period of six months or longer for a doping offence would be banned from participating, in any capacity, at the summer and winter Olympic Games immediately following the expiry of their suspension. Having won Olympic gold at Beijing 2008, Merritt tested positive in 2009 for the use of a banned steroid and was suspended for two years. When the suspension expired on 27 July 2011, he was free to compete in all competitions organised by signatories to the WADA Code and, in particular, the International Association of Athletics Federations. However, the new Rule 45 of the Olympic Charter prevented him from competing at London 2012 (and Sochi 2014, to prevent him from retraining as a winter sports athlete).

Following litigation in the USA, the USOC requested that the legality of the amended Rule 45 be submitted for interpretation to CAS, with the IOC as respondent to the proceedings. Despite the complexity of the claims made by the USOC, the decision of CAS is notable for its simplicity and clarity. First, it held that the WADA Code is incorporated into the Olympic Charter by Rule 44 (now Rule 43). This means, in particular, that only suspensions sanctioned by the WADA Code can be imposed on athletes who have committed a doping offence. Secondly, according to Article 23.2.2 of the WADA Code, no additional provisions can be added to a signatory's rules which change the effect of the punishment structure outlined in Article 10 of the Code.¹⁷ Therefore, as the IOC is a signatory of the Code and has incorporated it into its own rules by virtue of what is now Rule 43 of the Olympic Charter, it is not allowed to vary the punishment imposed on an athlete for a doping offence. Thus, as Merritt was banned for two years in accordance with Article 10 WADA Code, the IOC did not have the power to add to that period of suspension and had not followed its own rules by doing so; in other words, the amendment to Rule 45 Olympic Charter was *ultra vires*. Further, CAS also held that an additional punishment of this kind offended against the principle of double jeopardy, where a person cannot be punished twice for the same crime. Thus, the Rule was declared unlawful and has now been removed from the Olympic Charter.¹⁸

The decision in USOC v IOC marks a significant milestone in the history of the IOC, the Olympic Charter and CAS. Previously, national courts had been extremely reluctant to interfere with the decisions and the decision making process of the IOC,¹⁹ leaving affected athletes with little opportunity to have their case heard; if the IOC Executive Board considered that their interpretation and application of the Charter was right, then it was. Now, the interpretation of the Charter and its application to any given set of circumstances can be seen to be the preserve of a genuinely independent arbitrator, CAS.

All NOCs have also had to incorporate the WADA Code into their constitutions. Their membership of the Olympic Movement means that they are required to adhere to the terms of the Olympic Charter and, as noted above, Rule 43 now incorporates the Code into the Charter itself. Further, by Article 20.4 of the WADA Code, all NOCs must conform to the Code. It is for these reasons that WADA challenged the legality of the BOA's bye-law that imposes a lifetime ban on participation in the Olympic Games in any capacity where an athlete has been suspended for six months or longer for a doping offence. Following the USOC case, the BOA's lifetime ban was also held to be unlawful, and for the same reasons, despite it having significant support from present and former athletes, politicians and the general public.²⁰

OLYMPIC LAW IN THE UK

Once a city has been chosen as Olympic host, a raft of legislation is required, and not solely by the IOC, in order to ensure that all aspects of the Games can be coordinated effectively.²¹ The London Olympic Games and Paralympics Act 2006 was passed soon after the Games were awarded to London and operates as a piece of enabling legislation, where the details are provided later by the issuance of detailed Regulations.²²

The first part of the Act, sections 3–9, creates the Olympic Delivery Authority (ODA). This is a public body that has a wide variety of functions but whose main aim is to ensure that the necessary infrastructure is in place to enable LOCOG to run the Games in London. The ODA has overseen the planning and building of the Olympic venues, the provision of necessary utilities, the development of the Olympic Transport Plan and has been instrumental in liaising with the police on matters of security. Its powers associated with the Olympic Transport Plan, defined in sections 10–18, are extremely far-reaching and allow it to create routes through London from major transport interchanges and the athletes' village to the various competition venues around the city for the exclusive use of accredited individuals. It will also play a role in the enforcement of the advertising and trading Regulations, discussed further below.

The remaining sections of the Act provide the framework for the regulation of advertising in and around Olympic Venues (sections 19–24) and trading in event zones (sections 25–31). The extra detail required to create the various restrictions and define more fully the criminal offences associated with their breach can be found in the London Olympic Games and Paralympic Games (Advertising and Trading) (England) Regulations 2011/2898. On the face of it, these restrictions appear to have been created in order to provide an extra layer of protection to the official Olympic sponsors, but the way in which they are drafted means that they have the potential to catch a much wider group of people and are likely to prove increasingly controversial in the run up to the Games.

Restrictions on advertising and ambush marketing

There are two explanations for why the IOC demands such strict controls of advertising in and around Olympic venues. First, it requires all venues to be 'clean' in that they must all be free from visible advertising inside the venue and must not have sold their naming rights;²³ for example, when mentioned with regard to the Games, the Ricoh Arena will become the City of Coventry Stadium whilst the O2 Arena becomes the North Greenwich Arena. Further, this requirement will mean that all permanent advertising in and on the various venues must be

removed or covered up whilst being used for Olympic events. For the period of both the Olympics and the Paralympics, the IOC wants the focus of the Games to be the sporting competition, not commercial exploitation, therefore it prohibits any form of advertising inside the stadium apart from manufacturers logos appearing on the athletes' apparel and essential sporting equipment.

Secondly, and in contradistinction to the previous point, it is seeking to protect the value of the exclusive sponsorship agreements that LOCOG and the IOC have entered into, in order to raise the substantial sums required to host the Olympic Games, by preventing ambush marketing. Ambush marketing can take either of two forms. It can be an ambush of one of the official sponsors where a commercial rival seeks deliberately to undermine the authorised use of specific protected words or symbols for its own benefit. Alternatively, it can be an ambush of the event itself; for example, where an association with the event is made but the ambusher has not paid for the right to be associated with it in the way that its advertising campaign suggests. In both cases the event organiser, in this case LOCOG, is trying to protect the value of the commercial rights vested in the words and symbols most closely associated with its event, the London 2012 Olympic Games.

LOCOG has raised around £700 million through exclusive sponsorship deals and does not want the value of those rights diminished by any unauthorised associations being made with the London 2012. In order to prevent ambush marketing campaigns in the vicinity of Olympic venues, sterile zones of around 500m in diameter have been created around each of them, where only authorised adverts can be displayed. As permission to display an advert anywhere within these zones must be sought from LOCOG, only campaigns run by the official sponsors, partners and suppliers of London 2012, or those that are in completely different categories of product or service to the officially sponsored categories, are likely to be authorised.

Although these Regulations have the breadth to be extremely effective in preventing large scale ambush marketing campaigns directed at the official sponsors, their impact has not been fully explored. For example, their application is likely to have a disproportionate impact on Cardiff, where almost the whole of the central commercial and shopping district is covered by the ban on unauthorised advertising when matches in the Olympic Football Tournament are taking place at the Millennium Stadium.²⁴ Litigation surrounding the enforcement of the sterile zones and claims by LOCOG that ambush marketing has occurred are likely to become increasingly frequent in the run up to the start of London 2012.

Restrictions on making unauthorised associations with London 2012

The restrictions on ambush marketing go much further than the prevention of advertising in and around Olympic venues. Section 33 and Schedule 4 of the London Olympic Games and Paralympics Act 2006 create the London Olympic Association Right. This new intellectual property right provides specific legislative protection above and beyond normal copyright, design and trade mark law (which applies to all of the logos, mascots, medals and even the font created especially for LOCOG), to the commercial goodwill associated with London 2012. It ensures that any unauthorised commercial, contractual, financial, structural or corporate link made with London 2012 is a criminal offence punishable by a fine of up to £20,000. In particular, it prevents the use of specific words and phrases that are considered to suggest a commercial association with the Games. Thus, if any of the words, Games, Two Thousand and

Twelve, 2012 or Twenty Twelve are used in combination with each other or with any of the following: gold, silver, bronze, London, medals, sponsor, summer, then it is assumed that an association is being made to London 2012 and an offence is committed unless prior authorisation has been granted.

The guidance provided by LOCOG states that the law goes much further than this.²⁵ It is not only when these prohibited words or phrases are used that a breach of the London Olympic Association Right occurs; the context in which any words used can be taken into consideration when determining whether or not there has been an infringement. For example, 'Come to the capital and meet the world' against a backdrop of a sporting event or well-known Olympic athlete is likely to breach the Regulations. Further, by an extension of the Olympic and Paralympic Association Rights contained in the Olympic Symbols etc Protection Act 1995, LOCOG also has the right to prevent anyone from using the five ringed Olympic Symbol, Olympic Motto, the words Olympiad, Olympian, Olympic, their plurals and their Paralympic equivalents. Thus, any association with the Games must be paid for or can be prosecuted.

Restrictions on trading around Olympic venues

The Regulations also impose strict controls on street trading around Olympic venues before, during and after an event takes place.²⁶ Traders have had to reapply for their existing licences to operate during the Games period with no guarantee that they will be able to work during this lucrative time as not all will be granted Olympic licences; no new traders will be licensed, it is just that the numbers of traders operating will be reduced from the current number. These restrictions have been justified on the grounds of preventing ambush marketing, maintaining the 'look and feel' of the event zones, and on health and safety grounds.

To date, no clear explanation of how or why holders of existing licences would behave in one of these three ways has been provided. Moreover, if there are health and safety issues regarding traders operating around existing venues such as Lord's Cricket Ground, the All England Club at Wimbledon or St James' Park in Newcastle when Olympic events are taking place, why are there not similar concerns when these venues are used for their normal activities? These regulations demonstrate clearly the degree of control that LOCOG expects to exert over all aspects of the Games and everything associated with it.

CONCLUSION

The sources of Olympic Law are at present limited to the Olympic Charter and the municipal, regional and national legislation passed in order to facilitate the organisation of an edition of the Olympic Games. The impact of this unique legislation, however, is extremely far reaching and goes far beyond the multinationals at whom, ostensibly, much of it is aimed. The key to its success depends on who defines what a successful outcome is. LOCOG will want to ensure that its revenue streams and the value of the Olympic brand are adequately protected whilst local business and traders will be hoping to cash in on the huge number of people visiting the UK throughout the Games period. Despite concerns over its enforcement, what can be guaranteed is that the UK legislation will be used as a template for future mega-events; the Glasgow Commonwealth Games Act 2008 has received its Royal Assent and is already waiting in the wings.

Biographies

Dr Mark James is a Reader in Law and Director of the Salford Centre of Legal Research. His general teaching and research interests lie in the field of Sports Law, which he has been teaching for nearly 20 years, and he is the author of the leading student textbook, *Sports Law* (2010: Palgrave). Together with co-author Prof Guy Osborn, he is a co-editor of the open access *Entertainment and Sports Law Journal* and has given papers on his research all over the world. Most recently, he has conducted a series of analyses of the UK's Olympic legislation and the criminal sanctions attached to their breach.

Professor Guy Osborn is Professor of Law at the University of Westminster School of Law, and Co-Director of the Centre for Law, Society and Popular Culture. In addition to co-editing *Entertainment and Sports Law Journal*, he is co-editor (with Steve Greenfield) of the Routledge Monograph Series *Studies in Law, Society and Popular Culture* and has written widely on areas of law and popular culture, including a number of books co-authored with Steve Greenfield, such as *Regulating Football*, 2001, Pluto Press; *Law and Sport in Contemporary Society* 2001, Frank Cass. His current research interests include a variety of analyses of cultural and commercial dimensions of Olympic law and work on event tickets and social inclusion.

¹ For Beijing 2008, aggregate audiences were said to reach 4.7 billion, see A. Miah and B. Garcia, 2010, 'The Olympic Games: Imagining a new media legacy', 15 *British Academy Review* 37; and projections suggest that London 2012 will be higher still.

² <http://www.bbc.co.uk/news/uk-england-london-17302068>, last accessed 28 March 2012.

³ Rule 1 Olympic Charter, available at http://www.olympic.org/Documents/olympic_charter_en.pdf, last accessed 28 March 2012.

⁴ Rules 25 and 26 Olympic Charter.

⁵ Rule 27 Olympic Charter.

⁶ See further, <http://www.teamgb.com>, last accessed 28 March 2012.

⁷ Rules 25 and 27(2.1) Olympic Charter respectively.

⁸ Rules 25 and 27(2.6) Olympic Charter respectively.

⁹ Rule 1(3) Olympic Charter.

¹⁰ For further detail see James, Mark (2010) *Sports Law*, Basingstoke, Palgrave Macmillan, ch.14.

¹¹ See further, Greenfield, Steve, James, Mark and Osborn, Guy, 'The Olympics, the law and the contradictions of Olympism' in Lenskyj, Helen and Wagg, Stephen (Eds), *Palgrave Handbook of Olympic Studies*, Basingstoke, Palgrave Macmillan, 304–318.

¹² Mestre, Alexandre (2009) *The Law of the Olympic Games*, The Hague, TMC Asser Press, 11.

¹³ See further <http://www.tas-cas.org/history>, last accessed 28 March 2012.

¹⁴ *Gundel v FEI* CAS 1992/A/63 available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/63.pdf>, last accessed 28 March 2012.

¹⁵ *Gundel v FEI and CAS* ATF 119 II 271, Swiss Federal Tribunal 15 March 1993.

¹⁶ *USOC v IOC* CAS 2011/O/2422 available at <http://www.tas-cas.org/d2wfiles/document/5314/5048/0/Final20award202422.pdf>, last accessed 28 March 2012.

¹⁷ WADA Code available at http://www.wada-ama.org/Documents/World_Anti-Doping_Program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf, last accessed 28 March 2012.

¹⁸ See further, Greene, Paul, 'USOC v IOC: Olympic bans for 'convicted' dopers' (2011) 9(11) *World Sports Law Report* 3–5.

¹⁹ *Sagen et al. v VANOC* (2009) BCCA 522.

²⁰ *BOA v WADA* CAS 2011/A/2658 available at <http://www.tas-cas.org/d2wfiles/document/5879/5048/0/Award20265820FINAL.pdf>, last accessed 11 May 2012.

²¹ See further James, Mark and Osborn, Guy, 'London 2012 and the impact of the UK's Olympic and Paralympic legislation: protecting commerce or preserving culture?' 74(3) *Modern Law Review* 410–429.

²² For example, the Olympics, Paralympics and London Olympics Association Rights (Infringement Proceedings) Regulations 2010/2477 and the London Olympic Games and Paralympic Games (Advertising and Trading) (England) Regulations 2011/2898.

²³ Rule 50(2) Olympic Charter.

²⁴ Best, Jessica, 'Traders' anger over red tape for Olympics' South Wales Echo 23 March 2012, available at <http://www.thefreelibrary.com/Traders'+anger+over+red+tape+for+Olympics%3B+Permit+needed+to+trade...-a0283921447>, last accessed 28 March 2012.

²⁵ London 2012's Statutory Marketing Rights available at <http://www.london2012.com/documents/brand-guidelines/statutory-marketingrights.pdf>, last accessed 28 March 2012.

²⁶ In Cardiff, where the only event taking place is Olympic football, the stadium is very centrally located in the middle of the city centre and the event zone encompasses a large area within the centre, stretching from Cathedral Road in the north, to Tresillian Way in the South, the Hayes and Working Street in the east and Pendryis Street in the west. Given the location of the stadium, the impact upon a key business area is manifest.